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KHONG JIN TEONG v. MAJLIS PEGUAM MALAYSIA

HIGH COURT MALAYA, KUALA LUMPUR
LAU BEE LAN J
ZALEHA YUSOF J
ASMABI MOHAMAD J
B [ORIGINATING MOTION NO: 17D-1-09-2013]
12 DECEMBER 2014

LEGAL PROFESSION: *Professional discipline – Reinstatement – Restoration of name to roll of advocates and solicitors – Applicant struck off roll for*
C *misappropriating retention sums – Applicant admitted guilt and compensated complainants – Complainants withdrew complaint – Interview by Bar Council – Elements to be considered in exercising court's discretion – Whether High Court to consider views of Bar Council – Whether applicant fit and proper person to be restored – Whether fair and reasonable for applicant to be restored – Legal Profession*
D *Act 1976, s. 107*

Two complaints were lodged against the plaintiff, an advocate and solicitor, to the Advocates & Solicitors Disciplinary Board ('Disciplinary Board') by two clients alleging that the plaintiff had misappropriated a retention sum of RM2,500 for real property gain tax and that he had failed to return a
E stakeholder sum of RM44,000 respectively. The plaintiff did not attend the Disciplinary Board hearing but instead sent a letter to the Disciplinary Board, admitting to the complaints and reiterating that he was responsible for the complaints. The plaintiff paid the respective sums to the complainants and the complainants withdrew their complaints against the plaintiff. Despite
F these withdrawals, the defendant intervened into the complaints pursuant to r. 8 of Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 ('r. 8') by filing formal complaints with the Disciplinary Board. The Disciplinary Committee found the plaintiff guilty of both complaints and recommended that the plaintiff be struck off
G the roll of advocates and solicitors of the High Court ('the roll'). Accordingly, the plaintiff was struck off the roll. The plaintiff brought the present application to be restored to the roll pursuant to s. 107 of the Legal Profession Act 1976 ('the LPA').

Held (allowing application with no order as to cost):

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(1) In dealing with applications of this nature, the court must exercise its discretion judicially after taking into consideration the lapse of time between the date of the order striking out the solicitor off the roll and the date of his application for restoration. The court must also consider the views of the body entrusted by the legislature to regulate the
I discipline, conduct and affairs of the members of that body, in Malaysia, the Bar Council; *Teoh Hooi Leong v. Bar Council, Malaysia* (refd). (para 9)

(2) The onus is on the applicant to satisfy the court that he is a fit and proper person to have his name restored to the roll. The operative words in the LPA is if the court thinks it is 'fair and reasonable', the court may restore to the roll the name of an advocate and solicitor which had been removed from, or struck off, the roll. In order to exercise its discretion, the court has to strike a balance between the interest of the members of the public, the interest of the court and also the interest of the particular applicant making the application for restoration to the roll. The court must not treat the removal of the applicant from the roll as permanent and that the door for the applicant to return to the profession is shut forever; *Chan Chow Wang v. Malaysian Bar* (refd). (paras 10-12 & 15)

(3) The plaintiff was truly penitent and had made restitution. The plaintiff readily accepted responsibility and admitted having been involved with the complaints lodged against him by the two complainants. The plaintiff had also exhibited various testimonials from the members of the Malaysian Bar as well as his friends and close associates to illustrate that the plaintiff had repented and was now a useful and responsible member of the society; *Patrick Samuel Joseph Sebastian v. Majlis Peguam Malaysia* (refd). (para 22)

(4) The plaintiff had submitted evidence to demonstrate to the court that he had satisfied the test of a fit and proper person envisaged by s. 107 of the LPA; *Thavananthan Balasubramaniam v. Majlis Peguam Malaysia* (refd). Section 107 of the LPA was enacted to offer a second chance to an advocate and solicitor who had turned over a new leaf. There was a lapse of ten years from the time the order to remove the plaintiff from the roll was made to the time he submitted his application for reinstatement under s. 107 of the LPA. The plaintiff had suffered long enough economically, professionally, spiritually and socially. This too, ought to be considered by the court. (para 22)

Case(s) referred to:

Chan Chow Wang v. Malaysian Bar [1986] 1 LNS 94 HC ***(refd)***

Ex parte Lenehan [1948] 77 CLR 403 ***(refd)***

Patrick Samuel Joseph Sebastian v. Majlis Peguam Malaysia [2013] 1 LNS 1170 HC ***(refd)***

Re Lim Cheng Peng [1987] 1 LNS 104 HC ***(refd)***

Teoh Hooi Leong v. Bar Council, Malaysia [1991] 1 LNS 73 SC ***(refd)***

Thavananthan Balasubramaniam v. Majlis Peguam Malaysia [2009] 6 CLJ 217 FC ***(refd)***

Legislation referred to:

Legal Profession Act 1976, ss. 28, 94(3)(c), 103D, 107(3)

Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994, r. 8

For the plaintiff - Gobind Singh Deo; M/s Gobind Singh Deo & Co

For the defendant - Khoo Wai Tuck; M/s Hariati & Khoo

Reported by Amutha Suppayah

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JUDGMENT

Asmabi Mohamad J:

Introduction

[1] This is an application filed by the plaintiff, Mr Khong Jin Teong ("the plaintiff") who had been struck off the roll of advocates and solicitors of the High Court ("the roll") to be restored to the roll pursuant to s. 107 of the Legal Profession Act 1976 (Act 166) ("the LPA"). The defendant in this case is the Bar Council Malaysia, which body is entrusted with the management of the affairs of the Malaysian Bar and the proper performance of its functions under the LPA ("the defendant").

[2] This application was heard on 26 September 2014. On the same day after having perused the documents filed herein and upon hearing the learned counsels for the plaintiff and the defendant the court had granted the prayers sought by the plaintiff with no order as to cost.

The Application

[3] By the amended originating motion dated 17 December 2013 ("encl. 3") filed by the plaintiff pursuant to LPA, the plaintiff sought the following orders:

(i) That the name of the plaintiff be restored to the roll of advocates and solicitors as an advocate and solicitor who is qualified to practice law in Malaysia;

(ii) That the Registrar restores the name of the plaintiff to the roll of advocates and solicitors pursuant to his powers under s. 28 of the Act 166;

(iii) That the restoration of the name of the plaintiff to the roll of advocates and solicitors ("the roll") be executed within fourteen (14) days from the date of the order; and

(iv) Such further and other relief as this court deemed fit and just.

[4] The grounds relied by the plaintiff were:

(i) Since the plaintiff had been struck off the roll *vide* orders dated 4 August 2004 issued by the Disciplinary Board, pursuant to s. 103D of the LPA, the plaintiff had observed and complied with all the relevant code of ethics and all relevant laws applicable to such advocates and solicitors who are interested to practise law in Malaysia;

(ii) The plaintiff had been adversely affected, professionally, socially and economically. The plaintiff is remorseful and regretted all his past acts; and

(iii) The plaintiff had made restitutions to the original complainants who were adversely affected by the plaintiff's actions.

The Documents

[5] For the purpose of encl. 3 the following documents were filed and referred to by this court:

(i) The affidavit of Khong Jin Teong affirmed on 12 July 2013 ("encl. 2"); and

(ii) The affidavit of Wee Thiam Seng affirmed on 18 December 2013 ("encl. 4").

The Background Facts

[6] The facts leading to the filing of encl. 3 were not really in dispute. These facts were as follows:

(i) The plaintiff was admitted and enrolled as an advocate and solicitor of the High Court of Malaya on 14 December 1990 (see exh. "KJT-1" of encl. 2). Thereafter the plaintiff practised law as a legal assistant in Messrs Yong & Rakan-Rakan, Messrs Chong Yik Son & Fiona Ghaus and Messrs Abu Hassan & Choung respectively. In 1993, he practised as a sole-proprietor at Messrs J.T. Khong & Partners. In 1994, he joined Messrs Khor, Anuar & Khong as a partner in the firm. Whilst he was a partner in the legal firm of Messrs Khor, Anuar & Khong ("the said firm") he was entrusted with all the legal files and financial matters relating to the branch of the said firm at Klang, Selangor.

(ii) The first complaint was lodged with the Advocates & Solicitors Disciplinary Board ("Disciplinary Board") on 17 December 1999 by a client of the said firm at its Klang branch, one Madam Chen Wey Leng ("Madam Chen") against the plaintiff for breach of stakeholder's duties, involving misappropriation of retention sum of RM2,500 for real property gain tax ("the first complaint").

(iii) On 23 April 2000, another client of the said firm, at its branch in Klang, one Madam Foo Ann Wan ("Madam Foo") lodged a disciplinary complaint against the plaintiff with the Disciplinary Board ("the second complaint"). The crux of the second complaint related to a breach of the plaintiff's duties to Madam Foo as a stakeholder in failing to return the sum of RM44,000 to Madam Foo despite numerous requests and demands.

(iv) During this time, the said firm had also commenced bankruptcy proceedings against the plaintiff. On 10 October 2002 the receiving and adjudicating orders were recorded against the plaintiff (the "RO" & "AO"). However pursuant to court orders dated 29 April 2011, the RO & AO were annulled (see exh. "KJT-3" of encl. 2).

(v) The plaintiff did not attend the Disciplinary Board hearing but he had caused a letter dated 9 June 2003 to be sent to the Disciplinary Board, which was duly acknowledged by the Disciplinary Board. In the said

letter, the plaintiff admitted to the matters stated in first complaint and second complaint and reiterated that he was responsible for both the first and second complaints (see exh. "WTS-1" of encl. 4).

(vi) The plaintiff paid the sums stated in the first and second complaints and upon these repayments both Madam Chen and Madam Foo withdrew their complaints against the plaintiff.

(vii) Despite these withdrawals the defendant intervened into the complaints pursuant to r. 8 of the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 ("r. 8") by filing formal complaints with the Disciplinary Board. The first complaint was given Complaint No. DB/99/0413 and the second complaint was given Complaint No. DB/00/0101 respectively.

(viii) The hearing for the first complaint commenced and concluded on 24 February 2004 whereby the Disciplinary Committee, having found that the plaintiff was guilty recommended that the plaintiff be struck off the roll. (See exh. "WTS-1" of encl. 4).

(ix) The hearing for the second complaint commenced and concluded on 29 March 2004 which resulted in the Disciplinary Committee having found the plaintiff guilty and recommended that the plaintiff be struck off the roll. (See exh. "WTS-1" of encl. 4).

(x) Accordingly, pursuant to orders dated 4 August 2004 the plaintiff was struck off the roll (see exh. "KJT-2" of encl. 2).

(xi) The reports pursuant to s. 107(3) of the LPA in respect of the first and second complaints are as exhibited as exh. "WTS-1" of encl. 4.

The Law

[7] Section 107 of the LPA provides:

> 107. High Court may restore an advocate and solicitor
>
> (1) The High Court may, if it thinks fair and reasonable, at any time order the Registrar to restore to the Roll the name of an advocate and solicitor which has been removed from, or struck off, the Roll.
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> (2) Any application that the name of an advocate and solicitor be restored to the Roll shall be by originating motion supported by affidavit, before the High Court.
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> (3) Notice of the motion shall be served on the Bar Council which shall be represented at the hearing of the motion and shall place before the Court a report which shall include copies of the record of any proceedings as the result of which the name of the advocate and solicitor was removed from, or struck off, the Roll, and a statement of any facts which have occurred since the name of the advocate and solicitor was removed from, or struck off, the Roll and which in the opinion of the Bar Council or any member of it are relevant to be considered or to be investigated in connection with the application.

(4) In exercise of its jurisdiction under this section, the High Court shall comprise of three judges.

(5) Any party aggrieved by the decision of the High Court shall have a right of appeal to the Supreme Court.

Provided that the Judges who made the decision appealed from shall not sit as members of the Supreme Court.

[8] The principles within which this court should be guided in disposing the case at hand had been illustrated in a plethora of cases. In the case of *Teoh Hooi Leong v. Bar Council, Malaysia* [1991] 1 LNS 73; [1991] 2 MLJ 190 for instance, the Supreme Court had endorsed the principles enumerated in the Singaporean case of *Re Lim Cheng Peng* [1987] 1 LNS 104; [1988] 1 MLJ 231 as follows:

(i) The court may order restoration to the roll the name of an advocate and solicitor, which had been removed from or struck off, the roll if it thinks fit. However, this discretion must be exercised judicially;

(ii) The legislature does not provide the time frame within which the applicant ought to apply for restoration after having been removed from the roll and/or struck off the roll. However in arriving at its decision to restore the applicant to the roll the lapse of time between the date of the order striking the solicitor off the roll and the date of his application for restoration to the roll is filed in court is a relevant consideration; and

(iii) The court must consider the views of the body entrusted by the legislature for the proper management of the affairs and conduct of the profession.

[9] In a nutshell in dealing with the applications of this nature the court must exercise its discretion judicially after taking into consideration the lapse of time between the date of the order striking out the solicitor off the roll and the date of his application for restoration. The court must also consider the views of the body entrusted by the legislature to regulate the discipline, conduct and affairs of the members of that body, in Malaysia, the Bar Council.

[10] It was further reiterated in the same case that the onus is on the applicant to satisfy the court that he is a fit and proper person to have his name restored to the roll. In *Chan Chow Wang v. Malaysian Bar* [1986] 1 LNS 94; [1986] 2 MLJ 159, the court held that in the public interest the plaintiff has to demonstrate to the court that he will not likely repeat these offences if he is re-admitted. The onus is on the plaintiff to show that:

(a) there has been such a change in his character as to make him a fit and proper person to resume practice at the Bar;

(b) he is truly penitent; and

(c) he has made restitution.

[11] The operative words in the LPA is if the court thinks it is "fair and reasonable", the court may restore to the roll the name of an advocate and solicitor which had been removed from, or struck off, the roll.

[12] What is "fair" in the context of the LPA had been illustrated in the above quoted case of *Teoh Hooi Leong v. Bar Council, Malaysia* (*supra*). In order to exercise its discretion the court has to strike a balance between the interest of the members of the public, the interest of the court and also the interest of the particular applicant making the application for restoration to the roll.

[13] Therefore, any decision the court is going to make must be fair not only to the applicant making the application for the restoration but also to the members of the public and the court itself. It is important that the court takes into consideration the interest of the members of the public as the legislature has the duty to protect the public from errant and unscrupulous lawyers. This is so because the restoration to the roll of an advocate and solicitor will have the effect that the applicant is re-admitted into the profession and the members of the public would have to renew their professional relationship with the applicant.

[14] The decision must also be fair to the court as when the applicant is re-admitted he would be an officer of the court and the public expects that the court would ensure upright and honourable conduct on the part of its officers. (See *Ex parte Lenehan* [1948] 77 CLR 403).

[15] Lastly, the court must also consider the interest of the applicant and must not treat the removal of the applicant from the roll as permanent and that the door for the applicant to return to the profession is shut forever.

[16] In the case of *Teoh Hooi Leong v. Bar Council, Malaysia* (*supra*), which was quoted by the Federal Court in *Thavananthan Balasubramaniam v. Majlis Peguam Malaysia* [2009] 6 CLJ 217 at p. 225; [2010] 3 MLJ 316 at p. 323, the Supreme Court had reiterated the duties of the court in dealing with an application under s. 107 of the LPA as follows at p. 193 (MLJ):

> The duty of the court in a case like this is to exercise its discretion having regard to the materials available before it and the particular facts of the case. The question should be seen as an exercise of discretion according to particular facts of the case. It should never be regarded as a principle laid down as a rule of law that an advocate and solicitor who has been struck off the roll for dishonesty can never be reinstated.

[17] The Supreme Court in *Teoh Hooi Leong* (*supra*) held that the court must arrive at a reasonable decision. The court went on to illustrate the meaning of "a reasonable decision" as "... a decision which is based on reasonable grounds. A reasonable decision *must be supported by cogent evidence and not based on conjecture or speculation.*" (Emphasis added)

[18] Therefore it is clear from the above in exercising its discretion under s. 107 of the LPA this court must be guided by the principles illustrated herein and will have to examine this case on its own special factual circumstances.

The Issue

[19] There is only one issue for this court to consider:

Whether it is fair and reasonable to restore the plaintiff to the Roll.

Points Raised In Submission

By The Plaintiff

[20] The learned counsel for the plaintiff, amongst others, raised the following points in his submission:

(i) The plaintiff is truly penitent. Even at the outset and before the hearing before the Disciplinary Committee, the plaintiff readily accepted responsibility (see exh. "WTS-1" of encl. 4).

(ii) The plaintiff had also made restitution to the complainants, Madam Foo and Madam Chen and this had resulted in these two complainants having withdrawn their complaints against the plaintiff.

(iii) The plaintiff had also submitted evidence to demonstrate to the court that he had satisfied the test of a fit and proper person envisaged by s. 107 of the LPA. This is supported by the testimonials and recommendation letters from the members of the Malaysian Bar, his friends and close associates.

(iv) Despite the RO & AO having been made against him by his former firm the plaintiff had worked hard and managed to pull himself out of the financial difficulties and had since taken steps to annul the RO & AO made against him (see exh. "KJT-3" of encl. 2).

(v) The plaintiff was also committed to social work and was a volunteer for several fundraising and cultural organizations. The plaintiff served as a charity worker and was involved in fundraising campaign for the poor and destitute in Kulim, Kedah, Darul Aman.

(vi) Therefore, the plaintiff had satisfied the court with cogent evidence to show that he is a fit and proper person to be restored to the roll.

For The Defendant

[21] In opposition to the application, the learned counsel for the defendant raised, amongst others, the following arguments:

(i) It is the Malaysian Bar's stand that the offences under s. 94(3)(c) of the LPA are serious in nature because these offences involved dishonest or fraudulent conduct in the discharge of the advocate and solicitor's duties; breach of the provision of the LPA and rules made thereunder; breach of conduct which is unbefitting of an advocate and solicitor or conduct which is calculated to bring the legal profession into disrepute.

(ii) The plaintiff was involved with very serious offences namely criminal misappropriation of stakeholder's money and cheating. The plaintiff was found guilty and had failed to return the money to the complainants within reasonable time.

(iii) The sentence for offences will also serve as a deterrent and a clear message to the members of the Bar Council and the public at large that dishonesty, fraud and cheating are serious offences and seriously viewed by the Disciplinary Board. Therefore, the issues involving the reputation of the advocate and solicitor are not to be taken lightly. From the perspective of the public if the offender is not dealt with in accordance with the law and if the proper punishment is not meted out to commensurate the types of offences under the LPA then the public's confidence in the legal profession would be eroded. So a stern action must be taken in order to send the message of the Malaysian Bar's commitment to discipline its officers and maintain a high standard of practice within the profession.

(iv) The plaintiff is a repeat offender. Therefore, the plaintiff would require a much longer time to be rehabilitated to ensure that these types of offences would not be repeated.

(v) The court has a duty not only to the plaintiff but to the members of the public. Therefore, the court must protect the public from errant and unscrupulous lawyers. The court must also ensure that only persons with integrity, honest and trustworthy are allowed to be restored and not just anybody. The court must also be satisfied that that the applicant will not repeat similar offence in future.

(vi) The onus is on the plaintiff to prove that he is a fit and proper person to be reinstated to the roll and this burden is a heavy one, which the plaintiff will have to satisfy the court. This will have to be supported by cogent evidence and not one based on conjecture or speculation.

(vii) For the purpose of s. 107 of the LPA the court will only grant the reinstatement if it is fair and reasonable, which principle had been reiterated in a plethora of cases, *Thavananthan Balasubramaniam v. Majlis Peguam Malaysia* (*supra*) is one of those cases.

(viii) The plaintiff has to show that he is truly penitent and he has made restitution to be supported by testimonials and recommendations from friends and close associates.

(ix) The application for reinstatement to the roll is an exception and not a general rule. The court will have to take cognisance that offences involving advocates and solicitors are on the rise and will continue to rise as the Bar grows and the market conditions become increasingly competitive.

In the year 2011 alone, a total of 24 advocates and solicitors had been struck off the roll. In the year 2012, 19 advocates and solicitors had been struck off. The offences committed by the plaintiff is very serious in nature and the court must seriously consider all the reasons to be supported by cogent evidence before deciding to exercise its discretion to restore the plaintiff to the roll.

(x) Therefore, the Bar Council urged this court to dismiss the application.

Decision

[22] Based on the factual matrix of this case and supported by the high authorities as illustrated above these are our unanimous findings:

(i) The plaintiff had satisfied all the conditions as enumerated by the relevant authorities discussed above. He is truly penitent and has made restitution. Even at the outset and before the hearing of the disciplinary proceeding, the plaintiff readily accepted responsibility and admitted having been involved with the complaints lodged against him by the two complainants. This could be seen in exh. "WTS-1" of encl. 4.

(ii) The plaintiff had expressed penitence for his wrongdoing at paras. 17 and 18 of encl. 2. The plaintiff had also exhibited various testimonials from the members of the Malaysian Bar as well as his friends and close associates to illustrate that the plaintiff had repented and is now a useful and responsible member of the society as follows:

(a) Letter dated 6 February 2013 from Mr. Lee Han Meng of HM Lee;

(b) Letter dated 26 April 2013 from Mr Ooi Ghee Shen of Shen & Associate;

(c) Letter dated 12 June 2013 from Mr Zainal Fikri bin Ahmad of Zainal & Badrol;

(d) Letter dated 18 June 2013 from Dato' Boey Chin Gan.

(See exh. "KJT-5" of encl. 2)

(iii) The plaintiff had also made restitution to the complainants, Madam Foo and Madam Chen and this had resulted in these two complainants having withdrawn their complaints against the plaintiff. According to the plaintiff, the facts of his case disclosed that he was truly penitent and regretted for what happened. The case falls squarely within the facts illustrated in the case of *Patrick Samuel Joseph Sebastian v. Majlis Peguam Malaysia* [2013] 1 LNS 1170; [2014] 9 MLJ 479 quoted by the learned counsel for the plaintiff where the evidence of repentance, penitence plus settlement of all the fines and refund of the monies to the complainant were considered as the factors favourable to the applicant in an application under s. 107 of the LPA.

(iv) The plaintiff had also submitted evidence to demonstrate to the court that he had satisfied the test of a fit and proper person envisaged by s. 107 of the LPA. This is supported by the various testimonials and recommendation letters from the members of the Malaysian Bar and his friends and close associates. The Federal Court in the case of *Thavananthan Balasubramaniam v. Majlis Peguam Malaysia* [2009] 6 CLJ 217 at p. 224; [2010] 3 MLJ 316 at p. 322 held that this is sufficient evidence to show that the applicant is now a fit and proper person and the court ought to take this into consideration in exercising its discretion under s. 107 of the LPA.

(v) Despite the RO & AO, having been made against him by his former firm the plaintiff had worked hard and through sheer determination and perseverance he managed to pull himself out of the financial difficulties and obtained the orders to annul the RO & AO made against him. This is commendable as many bankrupts out there are not able to be discharged from their bankruptcy status and sadly some of them even die as bankrupts. (See exh. "KJT-3" of encl. 2).

(vi) The plaintiff is also committed to social work and was a volunteer for several fundraising and cultural organisations. The plaintiff served as a charity worker and was involved in fundraising campaign for the poor and destitute in Kulim, Kedah, Darul Aman. This is supported by the letter dated 18 June 2013 from Dato' Boey Chin Gan who was a State Assemblyman for Kulim, Kedah, Darul Aman in 2004 to 2008. Therefore, the plaintiff had satisfied the court with cogent evidence to show that he is a fit and proper person to be restored to the roll.

(vii) As I had illustrated above it is not the intention of the LPA to impose a permanent sanction on the plaintiff and prevent him from returning to his profession, the one and only trade he knew to make a living for himself as well as his family members. That was the precise reason s. 107 of the LPA was enacted to offer a second chance to an advocate and solicitor who had turned over a new leaf. Further on the factual matrix of this case there was a lapse of ten years from the time the order to remove him from the roll was made to the time he submitted his application for reinstatement under s. 107 of the LPA. The plaintiff had suffered long enough economically, professionally, spiritually and socially. This too, ought to be considered by this court.

(viii) In the case of *Thavananthan Balasubramaniam v. Majlis Peguam Malaysia* (*supra*) the Federal Court held that the court ought to examine the trend and pattern of sentences imposed by other courts as a guide to decide whether to restore the plaintiff to the roll. The Federal Court had also held that it is grossly unfair and unreasonable for the applicant to be left in a limbo and to endure the long wait before he could be reinstated. The law too does not envisage that an advocate and solicitor who had been struck off the roll must be totally barred from returning to the profession.

Conclusion

[23] We have considered the affidavits filed herein and the arguments by the respective learned counsels from both sides and we have given the matter a very careful and anxious consideration. We have also taken into consideration the circumstances illustrated above and guided by the relevant principles of law enumerated in the cases highlighted above, we unanimously came to the conclusion that it is fair and reasonable for the plaintiff to be restored to the roll. Accordingly, we granted the prayers sought by the plaintiff in terms of prayers (a), (b) and (c) of encl. 3 with no order as to cost.

[24] I have submitted these grounds of judgment, in draft, to my two learned sisters in the coram who had expressed their agreement to the judgment.